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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,597	09/30/2003	Frank Colletti	COLLETTI-1	5540
38563	7590	09/19/2006	EXAMINER	
DAVID J. DETOFFOL, ESQ., P.C. 305 BROADWAY, SUITE 1101 NEW YORK, NY 10007			TOMPKINS, ALISSA JILL	
			ART UNIT	PAPER NUMBER

3765

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/674,597	Applicant(s) COLLETTI ET AL.	
	Examiner Alissa J. Tompkins	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>8/28/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant's amendment filed on 8/28/06 has been received. Claims 1-7 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards (U.S. 4,300,240) in view of Wilcox (U.S. 891,122). Edwards discloses a cold weather mask 10 formed of a nylon laminate-type cloth (Column 1, 30-31). The mask is sized and shaped to fit snugly about the face of the wearer (Column 1, 31-32). The mask extends over the cheeks 18L and 18R to the left 20L and right 20R of the ears. The upper edge 24 extends over the bridge of the nose along the lower part of the eyes. The lower edge 26 extends along the intersection of the neck with the underside of the jaw (Column 1, 32-40)(Figure 1). The face member 12 has aperture means 30 formed proximate the nostrils of the nose allowing air to pass through. Aperture means are also located around the mouth in the form of a plurality of small holes allowing the passage

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of air between the interior and exterior of the face member (Column 3, 1-9). The left and right ear sections seen in Figure 1 have apertures 52R and 52L, which allow air and sound to pass through (Column 3, 44-47). The mask is secured to the wearer by a securing strap including left 57L and right 57R securing sections that extend and fasten at the back of the head at the base of the skull (Column 3, 64-68). However, Edwards does not show a mask having a top perimeter where the top of the forehead meets the scalp and also includes apertures for the eyes. Wilcox discloses a face protector made of a pliable material that is sized to wholly cover the face of the wearer (Column 1, 30-32). The face mask comprises eye-holes 2, a mouth opening 3, ear openings 4, and a strap 5 designed to extend from side to side and engage at the back of the head (Column 1, 30-41). The top perimeter of the mask is located along the juncture of where the top of the forehead meets the scalp. A crown member 5 is also shown, which extends upward from the top perimeter. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Wilcox to modify Edwards in order to provide a face protector that will effectively protect the wearer's face, eyes, and nose without causing any discomfort.

As for claims 5-7, Edwards states a method of manufacturing a mask including using an appropriate die to cut from a quantity of nylon laminate cloth. The same die or a second die may be used to form the second aperture while sewing is used to form the seams (Column 4, 51-66). The method of fabricating a face mask including the steps of supplying material and at least one cutting means to produce the device claimed is therefore obvious over the prior art made of record.

Response to Arguments

Applicant's arguments filed 8/28/06 have been fully considered but they are not persuasive.

Applicant submits that the Wilcox product admittedly fails from its underside to provide protection from common environment elements. Although Wilcox would provide some degree of protection from wind and environmental elements, Applicant is arguing features, which are not claimed.

Applicant also argues that the presumed combined device of Wilcox and Edwards is incapable of functioning as a self-secured whole-face protector arrayed to function without stability from the wearer's nose. When combined, Edwards and Wilcox offer a device that extends over the entire face of the wearer, with holes for the mouth, nose, and ears. The face protector can easily function without stability from the wearer's nose. When interpreted in the broadest manner, the structure of Edwards and Wilcox meets all of the limitations presented by the applicant.

Conclusion

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the

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application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa J. Tompkins whose telephone number is 571-272- 3425. The examiner can normally be reached on M-F 830-5.

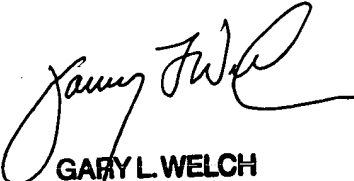
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Alissa Tompkins
Patent Examiner
Art Unit 3765
September 12, 2006

AJT



GARY L. WELCH
PRIMARY EXAMINER